

Richard S. Taffet
Diane C. Hertz
Jon P. Son
BINGHAM McCUTCHEN LLP
399 Park Avenue
New York, New York 10022
Tel: (212) 705-7000

and

Bennett D. Krasner
1233 Beech Street #49
Atlantic Beach, NY 11509
Tel: (516) 889-9353

*Attorneys for Plaintiff
L & L Wings, Inc.*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

L & L WINGS, INC.,

Plaintiff and Counterclaim Defendant,

-against-

MARCO-DESTIN INC., 1000 HIGHWAY
98 EAST CORP., PANAMA SURF &
SPORT, INC. AND E & T INC.,

Defendants and Counterclaim Plaintiffs.

Civil Action No. CV-07-4137
(BSJ) (GWG)

**PLAINTIFF'S SUPPLEMENTAL OPPOSITION TO MOTION FOR
SUMMARY JUDGMENT OF DEFENDANTS 1000 HIGHWAY 98 EAST
CORP. AND PANAMA SURF & SPORT, INC.**

Plaintiff L & L Wings, Inc. ("Wings" or "plaintiff") respectfully submits this Supplemental Opposition to the Motion for Summary Judgment of Defendants 1000 Highway 98 East Corp. ("Highway") and Panama Surf & Sport, Inc. ("Surf") (collectively, "Moving Defendants").

In its Opposition to Moving Defendants' Motion, Wings clearly demonstrates that there are numerous issues of material fact that preclude Moving Defendants' motion from being granted. In addition to the fact that movants executed the License Agreement that is the subject of this action, Wings proffered evidence, in the form of two investigators' reports, that: 1) there is a store unlawfully operating under the "Wings" name at 1000 Highway 98 East, in Destin, Florida (the same name as Defendant Highway); and 2) there is a "Wings" store unlawfully operating at 12208 Front Beach Road, Panama City Beach, Florida, which is the same address as the one listed on the Dun & Bradstreet Business Background Report for Defendant Panama. *See* Exh. B to Affidavit of Ariel Levy, previously submitted on this Motion. Clearly, this evidence raises significant questions as to whether Moving Defendants are, in fact, using the "Wings" name unlawfully.

Rather than refute the evidence provided by Plaintiff, movants seeks to attack it on the grounds that it constitutes impermissible hearsay. Although defendants' argument in this regard is misguided, in order to eliminate movants' objection, Plaintiff submits herewith the Supplemental Declarations of Michael Hebert and Tina Combs, the two investigators retained by Plaintiff who prepared the reports demonstrating that there are significant issues of fact as to whether movants are involved in the unlawful operation of at least two "Wings" stores. These Supplemental Declarations are based on personal knowledge and establish issues of fact as to movants' liability for, *inter alia*, breach of contract and infringement, and preclude summary judgment herein.

Conclusion

For the reasons set forth in Plaintiff's Opposition to Defendants' Motion for Summary Judgment, and the Supplemental Declarations submitted herewith, plaintiff L & L Wings, Inc. respectfully requests that Moving Defendants' Motion for Summary Judgment be denied in its entirety.

Dated: New York, New York.
February 7, 2008

BINGHAM McCUTCHEN LLP

By: s/ Diane C. Hertz

Richard S. Taffet
(richard.taffet@bingham.com)
Diane C. Hertz
(diane.hertz@bingham.com)
John P. Son
(John.Son@bingham.com)

399 Park Avenue
New York, NY 10022-4689
Telephone: 212.705.7000

Attorneys for Plaintiff